



Day5.txt

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AMERICAN ARBITRATION ASSOCIATION

DIANA NOLAN; OWEN NOLAN,

Claimant,

v.

PHILLIP A. KENNER; STANDARD  
ADVISORS, INC.; STANDARD  
ADVISORS, LLC,

Respondents.

Owner(s) or Reputed Owner(s)

NO. 76 148 Y 00223 08 DEAR

TRANSCRIPT OF PROCEEDINGS

Volume IV

(Pages 826 - 1100)

Phoenix, Arizona  
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Prepared By: MARY E. MANNING, RPR  
Certified Reporter  
Certificate No. 50444

Prepared for:

827

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3 TOMMY CONSTANTINE

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1	EXHIBITS		
2	NO.	IDENTIFIED	ADMITTED
3	46		881
	57		893
4	58		894
	60		897
5	64		886
	66		888
6	143		882
	144		882
7	145		883
	170		918
8	180		884

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9	Respondent Exhibits:		
10	1	1018	1019
	8	1017	1018
11	11	1012	1014
	12	1015	1015
12	13	1015	1016
	279	848	849
13	280	871	871

14  
15  
16  
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1 APPEARANCES:

2 Arbitrator Meyerson  
3 Arbitrator Gordon  
4 Arbitrator Campbell

5 For the Respondent:

6 LAW OFFICES OF RONALD RICHARDS & ASSOCIATES  
7 By Ronald Richards, Esq.  
8 P.O. Box 11480  
9 Beverly Hills, California 90213

10 LAW OFFICES OF THOMAS M. BAKER  
11 By Thomas M. Baker, Esq.  
12 5050 North 8th Place  
13 Suite 10  
Phoenix, Arizona 85014

12 For the Claimants:

13 BUCHALTER NEMER

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BRYAN BERARD,

19  
20 having been first duly sworn, was examined and testified as  
21 follows:  
22

23 DIRECT EXAMINATION

24 BY MR. RICHARDS:

25 Q. Do you know who the first pick of the 1994 NHL

914

1 draft was?

2 A. Yes.

3 Q. Who's that?

4 A. '94, Jovanovski.

5 Q. What about '95?

6 A. Myself.

7 Q. Now, do you see anybody in the room that you  
8 know?

9 A. Yes.

10 Q. And can you point out to someone that's currently  
11 your business manager?

12 A. Yes, Phil Kenner.

13 Q. Are you an investor in some real estate deals in  
14 Hawaii and Cabo San Lucas?

15 A. Yes.

16 Q. And prior to investing in those transactions can  
17 you just tell the panel what type of diligence or things  
18 you did before you made the investment?

19 A. Sure. I knew Phil was involved with a few land  
20 deals that to me sounded pretty interesting. I kind of  
21 called Phil. We had a discussion about the properties. I  
22 got on the plane. I met Phil.

23 I think it was Mexico -- the North Baja property

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24 I saw first. I loved it. I got involved in that. I  
25 invested \$500,000 of my money into that, and I believe Cabo

915

1 was next. I took a plane and went down and saw Cabo. It  
2 looked like a great piece of property. I was interested in  
3 it. I obviously invested money, \$200,000.

4 Q. You don't need to tell us the amount. That's  
5 your personal business.

6 A. Again, in Hawaii, I was definitely interested. I  
7 got on a plane and went and saw Hawaii. Again, I thought  
8 it was a great deal, and I got involved.

9 Q. When you were -- as far as the Hawaii deal, were  
10 you made aware of any sort of transaction Mr. Kenner set up  
11 where you can give a commitment or pledge a credit line in  
12 lieu of putting all your money in initially?

13 A. Yes.

14 Q. Can you tell the panel what was your  
15 understanding?

16 A. Basically the company -- it was set up. The  
17 company would pay the payments. I would pledge the money,  
18 obviously to get the loan for the property. Again, the  
19 company would pay the payments, and I wasn't forfeiting all  
20 the amount of money for the piece of property.

21 Q. Were you aware that Mr. Kenner got a credit line  
22 against some securities or investments you had?

23 A. Yes.

24 Q. And later on were you aware that Mr. Kenner  
25 starting lending this money to another principal in the

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1 Cabo project named Ken Jowdy?

2 A. Yes.



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3 Q. Were you aware that he had disclosed to you that  
4 he was going to lend this money at a rate of interest to  
5 benefit the investors?

6 A. Yes.

7 Q. And with respect to the --

8 MR. MEEKS: Objection. Leading.

9 ARBITRATOR MEYERSON: I'm sorry?

10 MR. MEEKS: I just want to point out that we're  
11 leading this witness quite a bit.

12 ARBITRATOR MEYERSON: Sustained.

13 Q. BY MR. RICHARDS: where did you think the money  
14 that Mr. Jowdy -- were you told where the money was going  
15 to be used that was given Mr. Jowdy as far as the Mexican  
16 project? Was there anything you were told about that?

17 A. Basically just loan him the money for the  
18 property.

19 Q. What about bank statements; did you have any  
20 problem getting any of your bank statements from Mr. Kenner  
21 at any time?

22 A. Not at all.

23 Q. And prior to signing any of these documents did  
24 you have access to your own attorney unconnected to  
25 Mr. Kenner to review this?

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1 A. Yes, I did. We have a family attorney back home  
2 where before I sign any documents basically -- I went to  
3 his office, sat with him. We reviewed them, and I signed  
4 them and basically FedEx'd them to Phil.

5 Q. At any time did Phil ever recommend or push these  
6 investments on you?

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7 A. Not at all. It was something I wanted to be  
8 involved in.

9 Q. At any time did Phil pressure you to sign any  
10 documents let's say on property or anything?

11 A. Not at all.

12 Q. Was everything very transparent and relaxed?

13 A. Something I wanted to do. I saw the properties  
14 in person, and I was very interested.

15 Q. At any time did Mr. Kenner or the people that  
16 were showing you the properties, like Mr. Jowdy, promise  
17 you some sort of return on your investment?

18 A. Not at all.

19 Q. At any time did someone tell you that you would  
20 be able to get this money back at a specific date?

21 A. Not at all.

22 Q. Did you understand that investing in a  
23 transaction like this, that your money could be tied up for  
24 a while?

25 A. Yes, I understand how that works.

918

1 MR. RICHARDS: I have no further questions.

2 ARBITRATOR MEYERSON: Thank you.

3

4 CROSS-EXAMINATION

5 BY MR. MEEKS:

6 Q. Good morning. Thank you for coming. Did you and  
7 Mr. Kenner own a property here in Scottsdale together?

8 A. Own a property?

9 Q. Yes.

10 A. I don't think I own --

11 Q. You did not own a property together?

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12 A. I think there's a mortgage that was in my name.

13 Q. Could you flip to Exhibit Number 170? It's in  
14 front of you. If you could look in this book down towards  
15 the bottom there's a tab on the right that says 170.

16 I'm sorry. I think I've got the wrong number on  
17 my notes. I'm sorry. 171.

18 Mr. Berard, did you sign this quitclaim deed  
19 along with Mr. Kenner?

20 MR. RICHARDS: What exhibit are you on?

21 Q. BY MR. MEEKS: Did you sign this quitclaim deed  
22 along with Mr. Kenner to this property to John Kaiser?

23 A. Yes.

24 Q. You signed this last year after this lawsuit was  
25 filed?

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1 A. Yes.

2 Q. But actually did Mr. Kaiser pay anything for that  
3 property?

4 A. Not that I know of.

5 MR. MEEKS: Thank you. No further questions.

6 MR. RICHARDS: No further questions.

7 ARBITRATOR MEYERSON: Questions?

8 ARBITRATOR CAMPBELL: What's the property about?

9 MR. RICHARDS: It's nothing to do with this case.

10 ARBITRATOR CAMPBELL: I was asking him.

11 THE WITNESS: The property is a house in PV  
12 basically they are renovating to sell. I think the  
13 mortgage is in my name.

14 ARBITRATOR MEYERSON: Anything else?

15 Frank, any questions?

16 Thank you very much. Have a nice day.